

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant incurred seven delinquent debts totaling about \$17,786, all of which were charged off or referred to collection agencies between July 2000 and May 2003. She took no action to resolve her debts until action on her application for a security clearance was imminent. She falsely answered "no" to two questions on her security clearance application about delinquent debts. Security concerns based on financial considerations and personal conduct are not mitigated. Clearance is denied.

CASENO: 06-25602.h1

DATE: 09/27/2007

DATE: September 27, 2007

In re:)	
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-----)	ISCR Case No. 06-25602
SSN: -----)	
)	
Applicant for Security Clearance)	

**DECISION OF ADMINISTRATIVE JUDGE
LEROY F. FOREMAN**

APPEARANCES

FOR GOVERNMENT

Jennifer I. Goldstein, Esq., Department Counsel

FOR APPLICANT

Phillip Carter, Esq.

SYNOPSIS

Applicant incurred seven delinquent debts totaling about \$17,786, all of which were charged off or referred to collection agencies between July 2000 and May 2003. She took no action to resolve her debts until action on her application for a security clearance was imminent. She falsely answered “no” to two questions on her security clearance application about delinquent debts. Security concerns based on financial considerations and personal conduct are not mitigated. Clearance is denied.

STATEMENT OF THE CASE

On March 20, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny Applicant a security clearance. This action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive); and the revised adjudicative guidelines (AG) approved by the President on December 29, 2005, and implemented effective September 1, 2006. The SOR alleges security concerns under Guidelines F (Financial Considerations) and E (Personal Conduct).

Applicant answered the SOR in writing on April 17, 2007, denied the allegations, and requested a hearing. The case was assigned to an administrative judge on June 12, 2007, and reassigned to me on July 25, 2007, based on workload. The case was heard as scheduled on August 23, 2007. I kept the record open until September 4, 2007, to enable Applicant to submit additional evidence. I received her evidence on September 4, 2007, and it was admitted without objection from Department Counsel. DOHA received the transcript (Tr.) on September 5, 2007.

FINDINGS OF FACT

Applicant's admissions at the hearing are incorporated into my findings of fact. I make the following findings:

Applicant is a 31-year-old technical services specialist for a defense contractor. She graduated from college in December 1998, with a bachelor's degree in psychology. She worked full-time for most of her college days, but there is no evidence in the record about her income during that period. After college, she worked for ten different employers in three states before she was hired for her current job. Several were entry-level temporary jobs. She was unemployed for a about three months in 2001 and about three months in 2004. She has worked for her current employer since November 2005 (Tr. 25-31; Government Exhibit (GX) 1 at 14-27). She has never held a security clearance.

Applicant's supervisors describe her as intelligent, honest, hard-working, trustworthy, and financially responsible in her personal life. She is responsible for handling materials worth between \$2 million and \$3 million. Her supervisors are aware of her past financial problems but believe she now manages her money very carefully (AX J, M). She was rated as "exceeding expectations" on her last performance appraisal, and she received a 4 percent pay raise. She has received recognition for her performance on three recent projects (Tr. 33).

One of her earlier supervisors described her as energetic, ambitious, and hard-working. He commented that she, like many recent college graduates, "made money and she spent it." He stated that she has since matured. He stated he has no reason to question her honesty or integrity (AX L).

Before working for her current employer, Applicant incurred seven the delinquent debts alleged in the SOR, totaling about \$17,786. Two debts were charged off or placed for collection in July 2000, two in September 2000, one in August 2001, one in June 2002, and one in May 2003.

Applicant's current employer has actively supported her efforts to resolve her debts and obtain a clearance. Her employer referred her to a credit counseling agency (Tr. 36) and paid all her expenses to attend the hearing (Tr. 52). Her husband attended the hearing at his own expense (Tr. 52-53).

Applicant enrolled in a debt management plan in June 2007. She pays \$290 per month for distribution to the four creditors alleged in SOR ¶¶ 1.c, 1.d, 1.e, and 1.f (AX H). She makes payments directly to the creditors alleged in SOR ¶¶ 1.b and 1.g (AX E, G, N). Her consolidated payment plan is designed to pay off all delinquent debts within about 24 months (Tr. 36). Her separate payment plan for the debt in SOR ¶ 1.g is designed to run for about 30 months (Tr. 75).

The evidence concerning the debts alleged in the SOR is summarized in the table below.

SOR	Debt	Amount	Status	Evidence
1.a	Library fines	\$238	Placed for collection 6-02; paid 8-07	GX 3 at 1; AX I; Tr. 34
1.b	Credit card	\$2,428	Charged off 7-00; payment plan started 8-07	GX 3 at 1; AX G; Tr. 35
1.c	Credit card	\$468	Charged off 9-00; payment plan started 8-07	GX 2 at 2; AX H; AX N; Tr. 35-36
1.d	Credit card	\$504	Charged off 9-00; payment plan started 8-07	GX 2 at 2; AX H; AX N; Tr. 35-36
1.e	Telephone credit card	\$2,917	Placed for collection 7-00; payment plan started 8-07	GX 2 at 2; AX H; AX N; Tr. 37
1.f	Credit card	\$6,527	Placed for collection 8-01; payment plan started 8-07	GX 2 at 2; AX D; Tr. 39
1.g	Car payments	\$4,704	Placed for collection 5-03; payment plan started 7-07	GX 2 at 3; AX E; AX N; Tr. 40

Applicant's credit reports reflect several delinquent debts not alleged in the SOR. A delinquent medical collection account for \$1,628 is being paid through her debt management plan (GX 2 at 1; AX H; Tr. 40). Her most recent credit report reflects several collection accounts for unpaid parking tickets issued in 2003 and 2004 (AX A at 4-11; Tr. 44-45). She testified she is making monthly payments on the parking tickets, but she submitted no substantiating documentation (Tr. 45).

Applicant testified that her debts became delinquent because she was dealing with personal issues that superseded her concern for her financial obligations. Her Electronic Questionnaire for Investigations Processing (e-QIP) discloses that, from August 1999 to the date of her e-QIP, she received therapy and counseling for child sexual abuse at the hands of her biological father (GX 1 at 34-35). She testified she spent much of her money for counseling and medication (Tr. 71). Her

counseling is now partially covered by her medical insurance. She now spends about \$100 per month for medications, about \$40 per month for individual counseling, and \$45 weekly for group counseling (Tr. 87).

Applicant was married in March 2007. Her net monthly income is about \$2,200, and her husband's net monthly income is about \$2,400. After they pay their rent, car payment, car insurance, student loans, utility and phone bills, they have a net monthly remainder of about \$2,800 for living expenses, debt payments, and savings (AX K). They spend \$200-\$400 per month for groceries, toiletries, and miscellaneous expenses (Tr. 85). Applicant's husband handles most of the family finances (Tr. 53).

Applicant has about \$12,500 in her 401(k) retirement account (AX F; Tr. 50). She and her husband live frugally and rarely spend money on entertainment (Tr. 50-52). She has not used credit cards since 2000 (Tr. 81).

Applicant executed her e-QIP on January 20, 2006. She answered "no" to questions 28(a) and (b), asking if she had been more than 180 days delinquent on any debts in the last seven years and if she was currently more than 90 days delinquent on any debt. She did not disclose any of the debts listed above.

In mid-2006, Applicant was interviewed by a security investigator and questioned about her delinquent debts. She readily admitted the debts to the investigator, and she disclosed her financial situation to her supervisor after her interview with the investigator (Tr. 58). She was aware her debts raised security concerns, but she did nothing to address the debts until she received the SOR in March 2007. She testified she was "in denial" and not focused on her past debts (Tr. 65-66).

Applicant denied intentionally falsifying her e-QIP. She testified she misunderstood questions 28(a) and (b) and thought they applied only to the original lenders and did not apply to debts that were charged off or referred to collection agencies (Tr. 54-55). She was aware of the delinquent debts but adamantly insisted at the hearing that she did not believe they were encompassed by the questions (Tr. 79-81). She had examined her credit report in 2005, in contemplation of purchasing a house, and she was aware of her old delinquent debts (Tr. 96). At the time she executed the e-QIP, she had no recent debts to original creditors more than 90 days past due (Tr. 55). She knew her credit reports would be included in her background investigation (Tr. 56).

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified. Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the Guidelines. Each clearance

decision must be a fair, impartial, and commonsense decision based on the relevant and material facts and circumstances, the whole person concept, the disqualifying conditions and mitigating conditions under each specific guideline, and the factors listed in AG ¶¶ 2(a)(1)-(9).

A person granted access to classified information enters into a special relationship with the government. The government must be able to have a high degree of trust and confidence in persons with access to classified information. However, the decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The Guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *See* Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; *see* AG ¶ 2(b).

CONCLUSIONS

Guideline F (Financial Considerations)

The SOR alleged seven delinquent debts totaling about \$17,786, charged off or referred for collection between June 2000 and May 2003. The concern under this guideline is as follows: “Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.” AG ¶18.

Several disqualifying conditions under this guideline could raise a security concern and may be disqualifying in this case. AG ¶ 19(a) is raised where there is an “inability or unwillingness to satisfy debts.” AG ¶ 19(b) is a two-pronged condition that is raised where there is “indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt.” AG ¶ 19(c) is raised when there is “a history of not meeting financial obligations.” AG ¶ 19(e) is raised when there is “consistent spending beyond one’s means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis.” AG ¶¶ 19(a) and (c)

are raised by Applicant's financial history. AG ¶ 19(b) is not raised, because she recently established a realistic plan to pay her debts. AG ¶ 19(e) is not raised, because there is no evidence in the record about her income during the period the debts were incurred.

Applicant introduced evidence of several delinquent debts not alleged in the SOR. Conduct not alleged in the SOR may be considered: "(a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive Section 6.3." ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) (citations omitted). I have considered this evidence for the limited purpose of evaluating Applicant's evidence of mitigation, determining whether she has changed her financial habits, and in my whole person analysis.

Since the government produced substantial evidence to raise the disqualifying conditions in AG ¶¶ 19(a) and (c), the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

Security concerns based on financial problems can be mitigated by showing that "the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment." AG ¶ 20(a). Applicant's debts are multiple and still not fully resolved. Her repayment plans have not been in effect long enough to establish a track record of financial responsibility, especially in light of her long record of financial neglect. "Only with the passage of time will there be a track record that shows whether a person, through actions and conduct, is willing and able to adhere to a stated intention to refrain from acting in a way that the person has acted in the past." ISCR Case No. 97-0727, 1998 DOHA LEXIS 302 at *7 (App. Bd. Aug. 3, 1998). I conclude AG ¶ 20(a) is not established.

Security concerns under this guideline also can be mitigated by showing that "the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances." AG ¶ 20(b). Both prongs, i.e., conditions beyond the person's control and responsible conduct, must be established. From her graduation in 1999 until she found her current position in November 2005, she worked at a series of intermittent, entry-level jobs, and she experienced at least two periods of unemployment, the last in late 2004. Her underemployment and unemployment were circumstances beyond her control. However, she found a permanent and responsible position in November 2005, but she took no action to resolve her debts until June 2007.

Since 1999, Applicant has been undergoing counseling and receiving medication for unspecified problems arising from child sexual abuse. These problems were beyond her control. However, the record does not reflect the severity of her emotional problems and does not establish that she was mentally or emotionally unable to act responsibly. To the contrary, she acted responsibly and decisively starting in June 2007, even though she continues to take medication and

receive counseling. She also incurred medical expenses, in an amount not reflected in the record, for medication and counseling, but her medical expenses have been partially covered by her medical insurance since she began her current employment. Applicant's periods of unemployment, emotional distress, and medical expenses were all circumstances beyond her control. However, I am not satisfied she acted responsibly. Applicant has the burden of establishing a mitigating condition. I conclude she has not carried her burden with respect to AG ¶ 20(b).

Security concerns under this guideline also can be mitigated by showing that "the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control." AG ¶ 20(c). This condition is established.

Security concerns under this guideline also can be mitigated by showing that "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." AG ¶ 20(d). The concept of good faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." ISCR Case No. 99-0201, 1999 WL 1442346 at *4 (App. Bd. Oct. 12, 1999). Evidence of past irresponsibility is not mitigated by payment of debts only under pressure of qualifying for a security clearance. Applicant took no action to resolve her debts until she received the SOR and finally realized she would not receive a clearance unless she put her financial house in order. I conclude AG ¶ 20(d) is not established.

Guideline E (Personal Conduct)

The SOR alleges Applicant intentionally falsified her security clearance application by answering "no" to the two questions about delinquent debts. The concern under this guideline is as follows: "Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process." AG ¶ 15.

The relevant disqualifying condition in this case is "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities." AG ¶ 16(a). When a falsification allegation is controverted, as in this case, the government has the burden of proving it. An omission, standing alone, does not prove an applicant's state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's state of mind at the time of the omission. *See* ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004) (explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).

Applicant is a well-educated, mature adult. She presented herself at the hearing as very intelligent and articulate. Her supervisors commented favorably on her intelligence. I find her explanation for not disclosing her debts totally implausible. She saw the delinquent debts on her credit report in 2005. She admits she was "in denial" about her debts, even after being interviewed by a security investigator. Her emotional distress deserves sympathy and understanding. Nevertheless, the evidence shows she knew she had numerous delinquent debts that had been

charged off or referred to collection agencies, but she intentionally failed to disclose them on her e-QIP. I conclude AG ¶ 16(a) is established.

Security concerns raised by false or misleading answers on a security clearance application can be mitigated by showing that “the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts.” AG ¶ 17(a). Applicant executed her application in January 2006, but she did not correct the omission until she was confronted with the evidence by a security investigator six months later. I conclude AG ¶ 17(a) is not established.

Security concerns under this guideline also can be mitigated by showing “the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment.” AG ¶ 17(c). Applicant’s offense is not minor; it is a felony under 18 U.S.C. § 1001, and it goes to the heart of the security clearance process. It is recent. It is “infrequent” because there is no evidence of other falsifications. It occurred during a routine security clearance application in connection with employment by a defense contract, which is not a unique circumstance. The falsification casts doubt on Applicant’s reliability and trustworthiness. The absence of other incidents of falsification offers some mitigation, but the remaining elements of AG ¶ 17(c) are not established.

Security concerns can be mitigated by evidence that “the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.” AG ¶ 17(d). It is unclear to what extent, if any, Applicant’s unfortunate childhood experiences caused her to conceal her financial problems. For reasons not apparent from the record, she chose not to present more detailed medical evidence. To the extent her emotional distress affected her financial management, she has sought medication and counseling to address those stressors. Her conduct is somewhat mitigated by the emotional distress her life experiences have caused her and her positive steps to deal with it.

Lastly, security concerns under this guideline can be mitigated by showing “the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.” AG ¶ 17(e). Applicant has now made full disclosure of her financial history and taken positive steps to right her financial ship. I conclude AG ¶ 17(e) is established.

Whole Person Analysis

In addition to considering the specific disqualifying and mitigating conditions under each guideline, I have also considered: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the applicant’s age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. AG ¶¶ 2(a)(1)-(9). Some of these factors are discussed above, but some merit additional comment.

Applicant is a mature, intelligent, well-educated adult. She has impressed her current supervisors, as demonstrated by the strong support she has received before and during the hearing. She has made a good start in resolving her financial problems, but not enough time has elapsed to demonstrate a change in financial habits. Her previous unwillingness to face financial reality and her lack of candor on her security clearance application raise serious concerns that can be overcome only by a track record of financial responsibility and absolute candor. Insufficient time has elapsed to demonstrate such a track record.

After weighing the disqualifying and mitigating conditions under Guidelines F and E, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns based on financial considerations and personal conduct. Accordingly, I conclude she has not carried her burden of showing that it is clearly consistent with the national interest to grant her a security clearance.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline F (Financial Considerations):	AGAINST APPLICANT
Subparagraphs 1.a-1.g:	Against Applicant
Paragraph 2. Guideline E (Personal Conduct):	AGAINST APPLICANT
Subparagraphs 2.a-2.b:	Against Applicant

DECISION

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant Applicant a security clearance. Clearance is denied.

LeRoy F. Foreman
Administrative Judge